

Letter of Findings: 04-20120074
Sales Tax
For the 2009 and 2010 Tax Years

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Sales Tax—Retail Sales.

Authority: IC § 6-8.1-5-1(c); IC § 6-2.5-2-1; IC § 6-2.5-4-1; [45 IAC 2.2-4-1](#); [45 IAC 15-3-2\(e\)](#); Sales Tax Information Bulletin 20 (October 2009).

Taxpayer protests the imposition of sales tax on trailers Taxpayer sold.

STATEMENT OF FACTS

Taxpayer is an Indiana business that manufactures trailers. Taxpayer also rents and sells trailers. Taxpayer was audited by the Indiana Department of Revenue ("Department"), and based upon that audit the Department issued proposed assessments for sales and use taxes for the 2009 and 2010 tax years. Taxpayer filed a protest with the Department. An administrative hearing was conducted, and this Letter of Findings results. Further facts will be supplied as required.

I. Sales Tax—Retail Sales.

DISCUSSION

As noted, the Department assessed Taxpayer sales and use tax for the 2009 and 2010. Taxpayer protests the imposition of sales tax on the trailer sales. In a letter to the Department, Taxpayer states that it manufactures trailers, and was told by the "license branch" that Taxpayer was "not a dealer" and thus could not "charge sales tax" on Taxpayer's sales of trailers. The Audit Report describes the situation thusly:

The audit revealed untaxed sales of trailers during the audit period. Three of the trailers were sold to Indiana customers, and one was sold to a [out-of-state] customer who purchased and picked up the trailer in Indiana. Exemption certificates were unable to be provided prior to the conclusion of the audit. The taxpayer disagrees with the audit findings for the sales of the trailers. It is the taxpayer's position that he received conflicting tax information from the Bureau of Motor Vehicles regarding the collection of sales tax and, based upon this information, quit collecting and remitting sales tax on the sale of trailers. The taxpayer maintains the position that he should not be penalized for following instructions provided by another state agency.

As a threshold matter, the Department notes that tax assessments are prima facie evidence that the Department's claim for the tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. See IC § 6-8.1-5-1(c).

Turning to the relevant law regarding the matter, IC § 6-2.5-2-1 states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state. (Emphasis added).

Also, IC § 6-2.5-4-1 states in pertinent part:

- (a) A person is a retail merchant making a retail transaction when he engages in selling at retail.
- (b) A person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he:
 - (1) acquires tangible personal property for the purpose of resale; and
 - (2) transfers that property to another person for consideration.
- (c) For purposes of determining what constitutes selling at retail, it does not matter whether:
 - (1) the property is transferred in the same form as when it was acquired;
 - (2) the property is transferred alone or in conjunction with other property or services; or
 - (3) the property is transferred conditionally or otherwise.
- (d) Notwithstanding subsection (b), a person is not selling at retail if he is making a wholesale sale as described in section 2 of this chapter. (e) The gross retail income received from selling at retail is only taxable under this article to the extent that the income represents:
 - (1) the price of the property transferred, without the rendition of any service; and
 - (2) except as provided in subsection (g), any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property transferred before its transfer and which are separately stated on the transferor's records.

For purposes of this subsection, a transfer is considered to have occurred after delivery of the property to the

purchaser.
(Emphasis added).

[45 IAC 2.2-4-1](#) further illustrates:

(a) Where ownership of tangible personal property is transferred for a consideration, it will be considered a transaction of a retail merchant constituting selling at retail unless the seller is not acting as a "retail merchant".

(b) All elements of consideration are included in gross retail income subject to tax. Elements of consideration include, but are not limited to:

(1) The price arrived at between purchaser and seller.

(2) Any additional bona fide charges added to or included in such price for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other services performed in respect to or labor charges for work done with respect to such property prior to transfer.

(3) No deduction from gross receipts is permitted for services performed or work done on behalf of the seller prior to transfer of such property at retail.

Taxpayer is a retail merchant and is required under IC § 6-2.5-2-1 and IC § 6-2.5-4-1 to collect and remit the sales tax. Although Taxpayer stated at the hearing that Taxpayer sold up to five or six trailers for each year at issue, the sales are not casual sales under Sales Tax Information Bulletin 20 (October 2009), 200911 Ind. Reg. 045090898NRA.

Taxpayer argues that he did not collect sales tax because the BMV told him that he is not a dealer and that Taxpayer should not collect sales tax. As the Department has noted above, Taxpayer is a retail merchant making a retail transaction. Further, the Department notes that any advice Taxpayer may have received from another state agency is not binding upon the Department ([45 IAC 15-3-2](#) states how a taxpayer can receive a binding ruling from the Department). Therefore, Taxpayer is responsible for the sales tax and interest owed on his trailer sales to customers in 2009 and 2010.

FINDING

Taxpayer's protest is respectfully denied.

Posted: 08/29/2012 by Legislative Services Agency

An [html](#) version of this document.